



Office of the Attorney General

State of Texas

September 16, 1992

DAN MORALES

ATTORNEY GENERAL

Ms. Melissa Winblood
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-546

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16959.

The El Paso Police Department (the "department") has received a request for "a copy of the arrest file of Jose Marquez, Jr. [including] . . . photographic duplicates of the arrest photos ("mug shots") of Mr. Marquez." The requestor represents the arrestee. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(8), and 3(a)(11) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You advise us that the department is in possession of criminal history information obtained from the National Crime Information Center (NCIC) (Exhibit B, Page B-11). In Open Records Decision No. 565 (1990) (copy enclosed), this office held that criminal history information obtained from the NCIC must not be released. Persons who are subjects of NCIC records may obtain such information only in accordance with federal regulations. Accordingly, you must withhold the document which is numbered as B11 from required public disclosure under section 3(a)(1) of the Open Records Act.

You claim that a "Case Information Sheet" (Exhibit B, Page B7) prepared by a prosecutor is excepted from required public disclosure by sections 3(a)(7) and 3(a)(11) of the Open Records Act. You further claim that this information is

excepted from required public disclosure by the attorney work product doctrine. Open Records Decision No. 574 (1990) (copy enclosed) held that section 3(a)(7) protects information that reveals client confidences to an attorney or that reveals the attorney's legal advice. Section 3(a)(11) protects advice, opinion, or recommendation intended for use in the entity's policy making or deliberative process, *id.* at 1-2, but does not protect facts and written observations of fact, Open Records Decision No. 582 (1990). The attorney work product doctrine protects information only if it is excepted by section 3(a)(3) of the Open Records Act, which excepts information relating to pending or reasonably anticipated litigation. Open Records Decision No. 574 at 6.

We have examined the documents submitted to us for review. We conclude that none of the information reveals client confidences to an attorney or an attorney's legal advice. We also conclude that the information does not contain advice or opinion intended for use in the department's deliberative process. Finally, you do not indicate that litigation in this matter is pending or reasonably anticipated. Accordingly, Exhibit B, Page B7 may not be withheld from required public disclosure under sections 3(a)(7) and 3(a)(11) of the Open Records Act, nor may it be withheld under the attorney work product doctrine.

You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(8) of the Open Records Act, which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

This office has stated in previous open records decisions that the test for determining whether records are excepted from public disclosure under section 3(a)(8) is whether release of the records would interfere unduly with law enforcement and crime prevention. Open Records Decisions Nos. 553 (1990) at 4; 474 (1987) at 5; 397 (1983); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). When the "law enforcement" exception is claimed as a basis for excluding information in an inactive criminal investigation file from public view, the

agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere unduly with law enforcement. Open Records Decision No. 397. A case-by-case determination is necessary. Open Records Decision No. 434 (1986) at 2-3.

You advise us that the case at issue has been dismissed. We conclude that you have not adequately demonstrated how release of the requested information would undermine legitimate interests of law enforcement, and the information submitted to us for review does not supply an explanation on its face. Accordingly, you may not withhold the requested information from required public disclosure under section 3(a)(8) of the Open Records Act. Except for Exhibit B, Page B11 which must be withheld from required disclosure under law, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-546.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GCK/lmm

Enclosures: Open Records Decision No. 574

Ref.: ID# 16959

cc: Mr. Paul Mac
Scruggs, Peterson & Leverton
1635 Lee Trevino, Suite C
El Paso, Texas 79936
(w/o enclosure)